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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA**

**CORNELE A. OVERSTREET,
Regional Director of the Twenty-Eighth
Region of the National Labor Relations
Board, for and on behalf of the
National Labor Relations Board,**

Petitioner,

v.

**AIR TRAFFIC MANAGEMENT
CONSULTING INC.,**

Respondent.

Case No.

**PETITION FOR TEMPORARY
INJUNCTION UNDER SECTION 10(j)
OF THE NATIONAL LABOR
RELATIONS ACT, AS AMENDED
[29 U.S.C. § 160(j)]**

(Oral argument requested)

Cornele A. Overstreet, Regional Director of Region 28 (Regional Director) of the National Labor Relations Board (the Board), petitions this Court, for and on behalf of the Board, pursuant to Section 10(j) of the National Labor Relations Act, as amended [61 Stat. 149; 73 Stat. 544; 29 U.S.C. § 160(j)] (the Act), for appropriate injunctive relief pending the final disposition of the matters involved herein pending a decision by the Board, on a complaint issued by the General Counsel of the Board (General Counsel), alleging, inter alia, that Air Traffic Management Consulting

1 Inc. (Respondent) has engaged in, and is engaging in, acts and conduct in violation of
2 Section 8(a)(1) and (5) of the Act [29 U.S.C. § 158(a)(1) and (5)]. In support of this
3 petition, the Petitioner respectfully shows the following:

4 1. The Petitioner is the Regional Director of Region 28 of the Board, an
5 agency of the United States, and files this petition for and on behalf of the Board.
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7 2. This Court has jurisdiction pursuant to Section 10(j) of the Act, which
8 provides, *inter alia*, that the Board shall have the power, upon issuance of a complaint
9 charging that any person has engaged in unfair labor practices, to petition this Court for
10 appropriate temporary injunctive relief or a restraining order pending final disposition
11 of the matter by the Board.

12 3. (a) On February 27, 2015, the International Association of Machinists
13 & Aerospace Workers, AFL-CIO, Local Lodge 845 (the Union), filed a charge with the
14 Board, in Case 28-CA-147299. (PX 9, p. 240)¹
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16 (b) On March 16, 2015, the Union filed a first amended charge in Case
17 28-CA-147299, alleging, *inter alia*, that Respondent has engaged in, and is engaging in,
18 unfair labor practices within the meaning of Section 8(a)(1) and (5) of the Act. (236)
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20 4. (a) The aforesaid charges were referred to the Petitioner as Regional
21 Director for Region 28 of the Board.
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24 ¹ The Petitioner has filed evidence in support of this Petition, contained within an
25 Appendix of Exhibits, which includes the affidavits and supplemental exhibits.
26 References to the Appendix of Exhibits will be designated by Bates number(s).

1 (b) Upon receipt of the charges described above in paragraph 3, and
2 after the investigation of the charges in which Respondent was given the opportunity to
3 present evidence and legal argument, the General Counsel, on behalf of the Board,
4 pursuant to Section 10(b) of the Act [29 U.S.C. § 160(b)], issued a Complaint and
5 Notice of Hearing on April 30, 2015 (Complaint), alleging that Respondent engaged in,
6 and is engaging in, unfair labor practices within the meaning of Section 8(a)(1) and (5)
7 of the Act. (223-234)

9 (c) On April 30, 2015, Respondent filed its Answer to the Complaint
10 (Answer), denying the commission of any unfair labor practices. (216-220)

11 (d) A hearing before an administrative law judge of the Board was held
12 on July 14, 2015, in Las Vegas, Nevada.

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14 5. There is reasonable cause to believe that the allegations set forth in the
15 Complaint are true and Respondent has engaged in, and is engaging in, unfair labor
16 practices within the meaning of Section 8(a)(1) and (5) of the Act, which are affecting
17 commerce within the meaning of Section 2(6) and (7) of the Act [29 U.S.C. § 152 (6)
18 and (7)], for which a remedy will be ordered by the Board, but that the Board's order for
19 such remedy will be frustrated without the temporary injunctive relief sought herein.
20 Petitioner asserts that there is a substantial likelihood of success in prevailing in the
21 underlying administrative proceedings in Case 28-CA-147299 and establishing that
22 Respondent has engaged in, and is engaging in, unfair labor practices in violation of
23 Section 8(a)(1) and (5) of the Act by, inter alia, refusing to bargain collectively with the
24 Union and failing or refusing to provide information requested by the Union. In support
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1 thereof, and of the request for temporary injunctive relief, Petitioner, upon information
2 and belief, shows the following:

3 (a) At all material times, Respondent has been a corporation with an
4 office and place of business at the Nellis Air Force Base (NAFB) in the State of Nevada
5 where it has been engaged in providing transient alert services.
6

7 (b) In conducting its operations during the 12-month period ending
8 February 27, 2015, Respondent provided transient alert services at the NAFB in the
9 State of Nevada to the United States valued in excess of \$500,000.

10 (c) Based on its operations described above in paragraph 5(b),
11 Respondent has a substantial impact on the national defense of the United States.
12

13 (d) At all material times, Respondent has been an employer engaged in
14 commerce within the meaning of Section 2(2), (6), and (7) of the Act.

15 (e) From at least October 1, 2013 to about September 30, 2014, South
16 Central Electrical & Maintenance Co. (South Central) furnished transient alert services
17 to the NAFB.

18 (f) About October 1, 2014, Respondent took over the contract to
19 furnish transient alert services to the NAFB, replacing South Central as the contractor,
20 and since that time, has continued to perform the contract services of South Central in
21 basically unchanged form, and has employed as a majority of its employees individuals
22 who were previously employees of South Central.
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1 (g) Based on its operations described above in paragraphs 5(e) and
2 5(f), Respondent has continued as the employing entity and is a successor of South
3 Central.

4 (h) At all material times, the Union has been a labor organization
5 within the meaning of Section 2(5) of the Act [29 U.S.C. § 152(5)].
6

7 (i) At all material times, Wayne MacKenzie held the position of
8 Respondent's President and has been a supervisor of Respondent within the meaning of
9 Section 2(11) of the Act [29 U.S.C. § 152(11)] and an agent of Respondent within the
10 meaning of Section 2(13) of the Act [29 U.S.C. § 152(13)].

11 6. (a) The following employees of Respondent (the Unit) constitute a unit
12 appropriate for the purposes of collective bargaining within the meaning of Section 9(b)
13 of the Act [29 U.S.C. § 159(b)]:
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15 All regular full-time and part-time aircraft servicers
16 employed by South Central Electrical & Maintenance Co.,
at the Nellis Air Force Base, excluding all other employees,
guards and supervisors as defined in the Act.

17 (b) On March 17, 2014, the Union was certified as the exclusive
18 collective-bargaining representative of the Unit employed by Respondent's predecessor
19 South Central.
20

21 (c) From March 17, 2014, until about September 30, 2014, based on
22 Section 9(a) of the Act [29 U.S.C. § 159(a)], the Union had been the exclusive
23 collective-bargaining representative of the Unit employed by Respondent's predecessor
24 South Central.
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1 (d) About October 1, 2014, Respondent recognized the Union as the
2 exclusive collective-bargaining representative of the Unit.

3 (e) At all times since about October 1, 2014, based on Section 9(a) of
4 the Act, the Union has been the exclusive collective-bargaining representative of
5 Respondent's employees in the Unit.
6

7 (f) Since about January 28, 2015, by letter, the Union has requested
8 that Respondent furnish it with the information contained in the letter attached hereto as
9 PX 9, p. 230.

10 (g) The information requested by the Union, as described above in
11 paragraph 6(f) is necessary for, and relevant to, the Union's performance of its duties as
12 the exclusive collective-bargaining representative of the Unit.
13

14 (h) Since about January 28, 2015, Respondent has failed and refused to
15 furnish the Union with the information requested by it as described above in paragraph
16 6(f).

17 (i) On about January 14, 2015, Respondent and the Union met for
18 purposes of negotiating an initial collective-bargaining agreement with respect to
19 wages, hours, and other terms and conditions of employment.
20

21 (j) Since about January 14, 2015, Respondent has failed and refused to
22 recognize and bargain collectively with the Union as the exclusive collective-bargaining
23 representative of the Unit.

24 7. The unfair labor practices of Respondent described above affect
25 commerce within the meaning of Section 2(6) and (7) of the Act.
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1 8. Certain of the unfair labor practices of Respondent described above have
2 taken place within this judicial district.

3 9. Upon information and belief, unless injunctive relief is immediately
4 obtained, it can fairly be anticipated that employees will permanently and irreversibly
5 lose the benefits of the Board's processes and the exercise of statutory rights for the
6 entire period required for the Board adjudication of this matter, a harm which cannot be
7 remedied in due course by the Board.

8 10. There is no adequate remedy at law for the irreparable harm being caused
9 by Respondent's unfair labor practices, as described above.

10 11. Granting the temporary injunctive relief requested by Petitioner will cause
11 no undue hardship to Respondent.

12 12. In balancing the equities in this matter, if injunctive relief as requested is
13 not granted, the harm to the employees involved herein, to the public interest, and to the
14 purposes of the Act, would clearly outweigh any harm that the grant of such injunctive
15 relief will work on Respondent.

16 13. Upon information and belief, it may fairly be anticipated that unless
17 Respondent's conduct of the unfair labor practices described above is immediately
18 enjoined and restrained, Respondent will continue to engage in those acts and conduct,
19 or similar acts and conduct constituting unfair labor practices, during the proceedings
20 before the Board and during any subsequent proceedings before a United States Court
21 of Appeals, with the predictable result of continued interference with the rights of
22 employees to engage in activities protected by Section 7 of the Act, with the result that
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1 employees will be deprived of their Section 7 rights under the Act, inter alia, to form,
2 join, or assist a labor organization or to refrain from any and all such activities, and will
3 be denied their statutory right to engage in other concerted activities for the purpose of
4 collective bargaining or other mutual aid or protection, all to the detriment of the
5 policies of the Act, the public interest, the interest of the employees involved, and the
6 interest of the Union.
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8 14. Upon information and belief, to avoid the serious consequences set forth
9 above, it is essential, just, proper, and appropriate for the purposes of effectuating the
10 policies of the Act and the public interest, and to avoid substantial, irreparable, and
11 immediate injury to such policies and interest, and in accordance with the purposes of
12 Section 10(j) of the Act that, pending final disposition of the matters now before the
13 Board, Respondent be enjoined and restrained from committing the acts and conduct
14 alleged above, similar acts and conduct, or repetitions thereof, and also be ordered to
15 take the affirmative action set forth below in paragraph 2.
16

17 WHEREFORE, Petitioner prays:

18 1. That the Court issue an order directing Respondent to appear before this
19 Court, at a time and place fixed by the Court, and show cause why an injunction should
20 not issue and, after consideration, issue an injunction directing, enjoining, and
21 restraining Respondent, its officers, agents, servants, representatives, successors, and
22 assigns, and all persons acting in concert or participation with them, pending the final
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1 disposition of the matters herein now pending before the Board, to cease and desist
2 from:

3 (a) refusing to bargain collectively with International Association of
4 Machinists & Aerospace Workers, AFL-CIO, Local Lodge 845 as the exclusive
5 representative of all its aircraft servicers employed at Nellis Air Force Base, excluding
6 all other employees, guards and supervisors as defined in the Act;

8 (b) failing or refusing to provide information requested by the Union,
9 in a timely fashion, that is necessary for and relevant to the Union's performance of its
10 duties as the exclusive collective-bargaining representative of the bargaining unit;

11 (c) in any other manner interfering with, restraining, or coercing
12 employees in the exercise of the rights guaranteed them under Section 7 of the National
13 Labor Relations Act [29 U.S.C. § 157].

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15 2. That the Court require Respondent to take the following affirmative
16 actions:

17 (a) upon request, bargain collectively with the International
18 Association of Machinists & Aerospace Workers, AFL-CIO, Local Lodge 845 as the
19 exclusive representative of all its aircraft servicers employed at Nellis Air Force Base,
20 excluding all other employees, guards and supervisors as defined in the Act, with
21 respect to rates of pay, wages, hours of employment and other conditions of
22 employment, and if an understanding is reached, reduce it to writing and sign it;

24 (b) immediately provide to the Union the information it requested on
25 January 28, 2015;

1 (c) within twenty-one (21) days of this Order, file with the Court,
2 and submit a copy to the Regional Director for Region 28 of the Board, a sworn
3 affidavit from a responsible agent of Respondent stating, with specificity, the manner
4 in which Respondent has complied with the terms of the Injunction Order.

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6 3. That upon return of the Order to Show Cause, the Court issue an Order
7 Granting Temporary Injunction enjoining and restraining Respondent in the manner set
8 forth above.

9 4. That the Court grant such further and other relief as may be just and
10 proper.

11 Dated at Las Vegas, Nevada, this Xth day of August 2015.

12
13 /s/ Nathan A. Higley

14 Nathan A. Higley, Esq.

15 On behalf of:

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